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Case 3:08-cv-00802-CRB
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                                                Filed 04/07/2008 Page 1 of 9
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                   108 APR - 7 PM 5:
IN THE UNITED STATES DISTRICT CO
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                 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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7
                                      No.C 08-0802 CRB (PR)
   JEFFERY E WALKER,
         plaintiff
                                                MOTION
9
   vs
                                         Brief In Opposition
10
                                         To Dismiss and Amend
  JOHN DOE, et al.,
                                           Discovery motion
12
13
14 Rule 26 through 37, fed.R civ.p If not current please understand that I
15 am not experienced at law but am trying to get the names of the John
16 Does mentioned including all medical staff jane does and all documents
17 needed to correctly state wich party did what that violated my rights.
18
19
                            Request the Following
20 1. Any and all Excessive Force documents in Jan 2006 ending on the 17 of Jan
21 2. Any and all court order grooming and dates and times groomed and staff
     in CJ-8 Who Accompinied me. (CJ-8) unit
22
23 3. Any and all Cell Housing numbers at that same time.
24 4. Any and all Names of inmates housed in CJ-8 Jan1 to jan 17
     C section only.
25
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26 5.Any and All Internal Affairs from jail investigation reports, Referals

28 Any and all supervisor Exessive force reports or documented info Jan 2006

and any grievances filed Jan 1 to Jan 17 2006

27

1
2 Any and all Sr deputies working CJ-8 Early evening shift from
3 Dec 2005 to Jan 10-06 Specificaly Dec.18 5005 % P.M.
4
5 This information is neacassary in getting the names and other info
6 needed to identify all parties.
7 Also rquest & Demand for Jury Trial
8 After the submitted info requested
9 by the court to Amend
10 Sicerly Jeff Walks
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Case Name: Jeffer/E walker & John Doc		
Case Number: NO C 04-0802 CRB (PR)		
Court: U.S. NOTHAM DISTICT		
PROOF OF SERVICE BY MAIL		
I, Jeffery Walker declare:		
That I am over the age of eighteen years of age and am not a party to the above entitled cause of action. That I reside in Solano County, California at the California Medical Facility, at 1600 California Drive, P.O. Box 2500, Vacaville, California, 95696-2500.		
That on		
Motion-Brief in apposition to Dismiss and		
Motion-Bryef in opposition to Dismiss and Amend discovery motion		
by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal legal mail collection system at the California Medical Facility, Vacaville, California, addressed as follows:		
office of clerk u.s. District court worther		
District of california, 450 colden 69te AV		
5. F. CA, 94102		
I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct. That this proof of service was executed on the		
Declarant Declarant's Signature		

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FILED

MAR 1 4 2008

RICHARD W. W. KING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFERY E. WALKER,	)
Plaintiff(s),	No. C 08-0802 CRB (PR)
vs.  JOHN DOE, et al.,  Defendant(s).	ORDER OF DISMISSAL WITH LEAVE TO AMEND  O

Plaintiff, a prisoner at the California Medical Facility in Vacaville, has filed a pro se complaint for damages under 42 U.S.C. § 1983 alleging that on December 18, 2005, while he was at the San Francisco County Jail, two correctional officers slammed him against a window, hit him in the face and body, forcibly dragged him to his cell and called him derogatory names. Plaintiff only names Doe defendants.

## **DISCUSSION**

## A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." <u>Id.</u> § 1915A(b). Pro se pleadings must be liberally construed, however. <u>Balistreri v. Pacifica Police Dep't</u>, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

# B. <u>Legal Claims</u>

Although regrettable, plaintiff's allegations that correctional officers called him derogatory names is not enough to implicate the Eighth Amendment. See Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (directing vulgar language at prisoner does not state constitutional claim). But plaintiff's allegations of use of excessive force may well state a claim for damages under § 1983. See Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (use of force maliciously and sadistically to cause harm violates 8th Amendment's proscription against cruel and unusual punishment). In order to proceed, however, plaintiff must identify the Doe defendants, and amend his complaint to name them and set forth specific facts showing how each individual defendant violated his rights.

See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999). Plaintiff will be afforded 30 days from the date of this order to identify the unknown Doe defendants and amend his complaint.

# **CONCLUSION**

For the foregoing reasons, the complaint is dismissed with leave to amend, as indicated above, within 30 days of this order. The pleading must be simple

and concise and must include the caption and civil case number used in this order and the words FIRST AMENDED COMPLAINT on the first page. Failure to file a proper amended complaint within the designated time will result in the dismissal of this action.

Plaintiff is advised that the amended complaint will supersede the original complaint and all other pleadings. Claims and defendants not included in the amended complaint will not be considered by the court. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

SO ORDERED.

DATED: March 14, 2008

CHARLES R. BREYER United States District Judge

## UNITED STATES DISTRICT COURT

#### FOR THE

#### NORTHERN DISTRICT OF CALIFORNIA

JEFFERY EUGENE WALKER,

Case Number: CV08-00802 CRB

Plaintiff,

CERTIFICATE OF SERVICE

JOHN DOE 1 et al,

٧.

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 14, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jeffery E. Walker F-11343 CMF P.O. Box 2000 Vacaville, CA 95696-2000

Dated: March 14, 2008

Richard W. Wieking, Clerk By: Barbara Espinoza, Deputy Clerk Jeffery E. Walker F-11343 CMF P.O. Box 2000 Vacaville, CA 95696-2000

CV08-00802 CRB

